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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 REMTECH, INC., a Washington  
9 corporation,

10 Plaintiff,

11 -vs-

12 FIREMAN'S FUND INSURANCE  
13 COMPANY, a California  
corporation,

14 Defendant.  
15

NO. CV-05-0087-LRS

ORDER ON PARTIES' MOTIONS FOR  
SUMMARY JUDGMENT AND  
PLAINTIFF'S MOTION TO COMPEL

16 **BEFORE THE COURT** are summary judgment motions brought by  
17 Plaintiff and Defendant in this case as well as Plaintiff's Motion to  
18 Compel. On November 8, 2006, and November 22, 2006, this Court heard  
19 oral argument concerning these matters with the Honorable Lonny R.  
20 Suko presiding. John Munding and Jeffrey Supinger participated on  
21 behalf of the Plaintiff, and Emilia Sweeney and Theodore Sheffield  
22 participated on behalf of the Defendant. After careful review of the  
23 pleadings submitted by all parties and with the benefit of oral  
24 argument, this order will memorialize and supplement the oral rulings  
25 of the Court on those dates, which are incorporated herein by  
26 reference.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 The facts which were recited by this Court on the record on  
3 November 8, 2006 are hereby incorporated into this order.

4 1. Defendant's Motion for Partial Summary Judgment on Coverage  
5 Related to the Heat Exchanger (**Ct. Rec. 247**) is **DENIED**. Genuine  
6 issues of material fact preclude Summary Judgment at this juncture.

7 2. Defendant's Motion for Summary Judgment re: Lost Profits  
8 (**Ct. Rec. 258**) is also **DENIED**. Genuine issues of material fact  
9 preclude summary judgment at this time.

10 3. Defendant's Motion for Summary Judgment re: Alleged WAC  
11 Violations (**Ct. Rec. 242**) is **GRANTED IN PART AND DENIED IN PART**.  
12 Defendant's Summary Judgment is granted with respect to WAC  
13 284-30-330(1), which defines as unfair "misrepresenting pertinent  
14 facts or insurance policy provisions." However, in this case, there  
15 is no evidence that there were any misrepresentations made by either  
16 party. As Defendant argues, given the fact that Remtech clearly  
17 alleges that Fireman's Fund violated the actual terms of the policy,  
18 this is not a case about misrepresentations, therefore, any claims  
19 that are premised upon an alleged violation of WAC 284-30-330(1) are  
20 dismissed as a matter of law.

21 Moreover, WAC 284-30-330 (18) states the following: "[f]ailing to  
22 make a good faith effort to settle a claim before exercising a  
23 contract right to an appraisal." From the record submitted it appears  
24 that neither party exercised its contractual right to an appraisal in  
25 this case. Therefore any claim based on WAC 284-30-330(18) is  
26 **DISMISSED** as a matter of law. All other portions of Defendant's

1 Motion for Summary Judgment are **DENIED** because genuine issues of  
2 material fact remain.

3 4. Plaintiff Remtech's Motion for Partial Summary Judgment  
4 (**Ct. Rec. 235**) is **DENIED**. Plaintiff's motion has more than one  
5 purpose. First, Remtech seeks an order of partial summary judgment  
6 against Fireman's Fund in the amount of \$274,947. This motion was  
7 argued at the November 8, 2006 hearing. The parties were then allowed  
8 to submit additional briefing. On November 22, 2006, the Court  
9 reconvened oral argument on this issue. After careful review of the  
10 briefing and with the benefit of oral argument on two separate  
11 occasions, the Court **DENIES** Plaintiff's request because genuine issues  
12 of material fact exist. Plaintiff argues that the \$274,947 was the  
13 undisputed amount that Fireman's Fund offered Remtech as a replacement  
14 value, however, Defendant disputes whether the \$274,947 represents the  
15 amount of Remtech's loss. Additional information from earlier filings  
16 also raises questions about the conditions and terms of the sum  
17 offered (or proffered) and whether contingencies binding on the  
18 parties will be incurred if the amount at issue is paid. Under these  
19 circumstances the Court cannot as a matter of law, at this stage of  
20 the litigation, conclude that the sum set forth is without controversy  
21 in establishing the minimum loss suffered or admitted as being due and  
22 owing from Defendant. This portion of the motion is **DENIED WITHOUT**  
23 **PREJUDICE**.

24 In addition, Plaintiff seeks an order stating that as a matter of  
25 law, Fireman's Fund violated the Washington State Consumer Protection  
26 Act and acted in bad faith. Plaintiff's Motion is **DENIED**. Genuine

1 issues of material fact preclude summary judgment at this time.  
2 Moreover, Plaintiff seeks an order establishing that the facts set out  
3 in Plaintiff's motion for summary judgment are undisputed facts for  
4 trial purposes. This request is **DENIED** as genuine issues of material  
5 fact remain for the trier of fact.

6 5. Plaintiff's Motion to Compel the Production of Documents  
7 Relating to Barry Johnson and Scott Bowers (**Ct. Rec. 419**). This  
8 motion was noted without oral argument for November 21, 2006, however,  
9 this Court entered its oral ruling on November 22, 2006. For the  
10 reasons stated on the record on that date, the motion is **DENIED IN**  
11 **PART AND GRANTED IN PART**. The motion is denied with respect to  
12 documents relating to Mr. Bowers because these documents are not  
13 likely to lead to the discovery of admissible evidence. The Motion is  
14 **GRANTED** with respect to documents relating to Mr. Johnson. Plaintiff  
15 specifically seeks to compel Fireman's Fund to "produce all documents  
16 not previously produced relating to or involving the job performance,  
17 performance reviews or evaluations, warnings, discipline, job related  
18 training and/or resumes of Barry Johnson." All of the documents in  
19 Mr. Johnson's personnel file, or which have at one time since April  
20 2004 been in his file or maintained elsewhere as a record, whether  
21 electronic or otherwise, relating to these topics which have not been  
22 previously disclosed shall be disclosed **NO LATER THAN December 5,**  
23 **2006**. As discussed during the November 22, 2006 hearing, Defendant  
24 should endeavor to disclose these materials sooner if at all possible.  
25 As noted, documents of a personal nature relating to Mr. Johnson's  
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1 marital status or health are not covered by this order, and need not  
2 be disclosed.

3 Furthermore, while the Court is ordering Defendant to produce the  
4 documents discussed above, it expressly reserves the issue of  
5 admissibility of these documents for a later date. The Court finds  
6 that **NO FEES OR COSTS** shall be awarded.

7 **IT IS SO ORDERED.** The District Court Executive is directed to  
8 enter this order and to provide copies to counsel.

9 **DATED** this 28th day of November, 2006.

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11 ***s/Lonny R. Suko***

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13 LONNY R. SUKO  
14 UNITED STATES DISTRICT JUDGE  
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